IN THE HIGH COURT OF DELHI

CM(M) No.818/2003

Mr.Sanjiv Sangwan ..... Petitioner
! through: Mr.Kirti Uppal, Adv.

VERSUS

$ Smt.Sangeeta Sangwan ..... Respondent
^ through: Mr.Rajesh Yadav, Adv.

RESERVED ON: 01.08.2007

% DATE OF DECISION: 07.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Order dated 26.7.2003 impugned in the present petition has dismissed an application filed by the petitioner seeking review of the order dated 28.1.2003 vide which order learned Matrimonial Judge granted a monthly maintenance of Rs.25,000/- to the respondent (wife). Additionally, Rs.15,000/- towards litigation expenses was directed to be paid by the petitioner.

2. Petitioner and the respondent were married as per

Hindu rites and custom on 31.1.1990. The marriage soured. The husband and wife separated. 2 children born out of the wedlock are admittedly students of a reputed public school in Kodaikanal. Expenses of the 2 children are borne by the petitioner.

3. Seeking interim maintenance under Section 24 of the Hindu Marriage Act 1955 respondent stated that she had no source of income. That proprietory rights of a defunct factory by name of M/s.Solutions in Gurgaon belonged to her. She stated that the factory was lying closed and was a defunct unit.

4. Qua the petitioner, respondent stated that he had a factory at Panipat where from he was having a monthly income of Rs.5 lacs. He had a residential house at Sikandrabad, opposite to the residence of the Chief Minister. He had a residential flat in a group housing society at Delhi. He had agricultural land in district Gurgaon and district Bhiwani, Haryana.

5. Pertaining to the lifestyle of the husband she stated that the husband was maintaining 3 high segment cars viz. Tata Sierra, Honda City and Mercedes Benz. That he was a member of 3 clubs viz. DLF Gymkhana, Gurgaon; Classic Golf Resort, Jaipur and Siri Fort Complex.

6. Opposing the application, respondent stated that the

factory where from business under the name and style of M/s.Solutions was being run was on a plot owned by the wife. That he had raised a superstructure thereon. That notwithstanding the fact that the wife was a name lender she withdrew the power of attorney authorizing him carry on the affairs of the business of the sole proprietory firm of the wife. She withdrew Rs.3.5 lacs from the bank. That father of the wife was an ex-member of the Legislative Assembly in Haryana. He ousted the petitioner from the said business and has taken over the entire assets thereof.

7. Qua the children, the respondent admitted that the children were in a boarding school. Qua the residential properties, petitioner denied owning any house at Sikandrabad. He admitted being a member of a cooperative society at Delhi but stated that possession of the flat had yet to be handed over to him by the society. He stated that he was making payments in installments to the society as and when money was demanded by the society. He denied owning any agricultural land in Haryana. He accepted owning a Tata Sierra but stated that it was under a hire-purchase agreement. He denied owning the Honda City car. He stated that the car Mercedes Benz was registered in the name of M/s.Solutions and was got financed by and under a loan obtained from Tata Finance. He

stated that the car was in possession of Patel Motors who were claiming a substantial amount for repair of the car.

8. Regarding membership of the 3 clubs, petitioner admitted membership of Classic Golf Resort, Jaipur. He stated that membership of DLF Gymkhana, Gurgaon had lapsed. He denied being a member of Siri Fort Complex.

9. Vide order dated 28.1.2003 learned Judge has, after noting the rival versions, justified grant of monthly maintenance in sum of Rs.25,000/- to the respondent on a single fact, being that, the husband was paying an annual fee to Kodaikanal International School of nearly Rs.7 lacs per annum for each child.

10. Though not expressly stated, it is obvious that the signature tune of the order dated 28.1.2003 is that if the husband can spend Rs.14 lacs per annum on the tuition fee of the 2 children it evidenced his substantial means.

11. Seeking review it was pointed out that the annual fee of each child is Rs.1.75 lacs. It was also pointed out that to finance the fee of the children the husband had to take a loan against his LIC policy. He further stated that he had obtained various loans which had to be repaid.

12. Vide impugned order dated 26.7.2003, learned Judge has held that all issues raised were discussed while

passing the order granting monthly maintenance to the wife. That no case was made out for review of the said order.

13. At the outset, I may note that in the order granting maintenance, as noted by me herein above, learned Matrimonial Judge noted the respective contentions of the parties but founded his order primarily on the plea of the wife that the husband was paying an annual fee of Rs.7 lacs per child to the school where the children were admitted.

14. Indeed, this is incorrect. At the hearing held on 01.08.2007, learned counsel for the respondent conceded that the annual fee payable to the school per child is Rs.1.75 lacs.

15. Thus, it was expected from the learned Trial Judge to have considered the matter afresh as indeed there was an error apparent on the face of the order granting monthly maintenance to the wife.

16. But, I do not intend to remit the matter for fresh adjudication, for the reason in my opinion, independent of the issue as to what annual fee has to be paid for education of the 2 children, enough material exists on record to justify monthly maintenance of Rs.25,000/- in favour of the wife.

17. As opined in various judicial decisions it is a usual tendency to not truthfully disclose ones income when a dispute surfaces between a husband and a wife.

18. As held in the decision dated 18.4.2007 in CM(M) No.40/2005 titled as '*Bharat Hegde vs. Saroj Hegde*', the following are the guiding factors which have to be taken into consideration while adjudicating the claims under Section 24 of the Hindu Marriage Act:-

1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non applicant has to maintain.

5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non applicant.

9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

10. The non applicant to defray the cost of litigation.

11. The amount awarded u/s. 125 Cr.PC is adjustable against the amount awarded u/s. 24 of the Act.

19. Admitted by the husband is the fact that he is paying an annual fee of Rs.3.5 lacs for the education of both the children in Kodaikanal International School. Admitted by the

husband is the fact of membership of a 5 star club called Classic Golf Resort. Admitted by the husband is the fact that he is a qualified chartered accountant and had worked with Coopers and Lybrand Deloitte, a reputed firm of chartered accountants in England. Petitioner admits that having worked abroad from 1984-1991 he came to India and joined M/s.Price Water House, a leading firm of chartered accountants.

20. In Suit No.1150/1998, pending on the Original Side of this Court he claimed to have invested Rs.15 lacs in the business of M/s.Solutions which he claimed was his and that his wife was a name lender. In the said suit he admitted bringing a Mercedes Benz car to India which was sold for Rs.22 lacs.

21. In the said suit he admitted that the firm M/s.Solutions made profits of Rs.11,24,436.91 during the financial year 1993-94, profits of Rs.9,63,827.29 in the financial year 1995-96 and profit of Rs.23,29,381.77 in the financial year 1996-97.

22. In Suit No.1150/1998, petitioner stated that his wife was a housewife and had no means of any income.

23. Defending the suit, respondent states that she was managing business and that her husband was looking after the marketing and accounts of the factory.

24. Much was attempted to be made out by learned

counsel for the petitioner with reference to the written statement filed by the respondent while opposing Suit No.1150/1998.

25. But, I give no credence to the said fact for the reason it is the usual story of everybody trying to grab whatever is available to be grabbed.

26. What is relevant is that the respondent categorically stated in the written statement that her husband had complete control over the marketing and finances of the business conducted under the name and style M/s.Solutions.

27. Prima facie, the respondent was obviously a name lender.

28. The lifestyle of the family and the current lifestyle enjoyed by the husband can be gauged from the fact that a Tata Sierra and a Mercedes Benz is still with the husband. It is difficult to believe that for a repair bill, the husband would not lift the car from the garage. No doubt, Mercedes Benz and the Tata Sierra are under a finance, but he who purchases luxury cars under a finance evidences his lifestyle if nothing more.

29. Petitioner is also a member of a 5 star club.

30. The totality of the circumstances justify an inference that the monthly income of the husband, commensurate with his lifestyle and ability to repay monthly installments for 2

luxury cars and a flat cannot be less than Rs.2 lacs.

31. Matter can be looked at from another angle.

32. If school fee paid for the 2 children is Rs.3.5 lacs, annual maintenance to the wife in sum of Rs.3 lacs cannot be called excessive.

33. As noted above, monthly maintenance awarded to the wife is Rs.25,000/- i.e. Rs.3 lacs per annum.

34. I thus find no merit in the petition.

35. The petition is dismissed.

36. No costs.

August 07, 2007 (PRADEEP NANDRAJOG)
dk JUDGE